

Securities and Exchange Commission

§ 240.10A-1

§ 240.10b-21 Deception in connection with a seller's ability or intent to deliver securities on the date delivery is due.

PRELIMINARY NOTE TO § 240.10B-21: This rule is not intended to limit, or restrict, the applicability of the general antifraud provisions of the federal securities laws, such as section 10(b) of the Act and rule 10b-5 thereunder.

(a) It shall also constitute a “manipulative or deceptive device or contrivance” as used in section 10(b) of this Act for any person to submit an order to sell an equity security if such person deceives a broker or dealer, a participant of a registered clearing agency, or a purchaser about its intention or ability to deliver the security on or before the settlement date, and such person fails to deliver the security on or before the settlement date.

(b) For purposes of this rule, the term *settlement date* shall mean the business day on which delivery of a security and payment of money is to be made through the facilities of a registered clearing agency in connection with the sale of a security.

[73 FR 61677, Oct. 17, 2008]

REPORTS UNDER SECTION 10A

§ 240.10A-1 Notice to the Commission Pursuant to Section 10A of the Act.

(a)(1) If any issuer with a reporting obligation under the Act receives a report requiring a notice to the Commission in accordance with section 10A(b)(3) of the Act, 15 U.S.C. 78j-1(b)(3), the issuer shall submit such notice to the Commission's Office of the Chief Accountant within the time period prescribed in that section. The notice may be provided by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the required time period.

(2) The notice specified in paragraph (a)(1) of this section shall be in writing and:

(i) Shall identify the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings by the Commission) and the independent accountant (including the independent accountant's name and phone number, and the ad-

dress of the independent accountant's principal office);

(ii) Shall state the date that the issuer received from the independent accountant the report specified in section 10A(b)(2) of the Act, 15 U.S.C. 78j-1(b)(2);

(iii) Shall provide, at the election of the issuer, either:

(A) A summary of the independent accountant's report, including a description of the act that the independent accountant has identified as a likely illegal act and the possible effect of that act on all affected financial statements of the issuer or those related to the most current three-year period, whichever is shorter; or

(B) A copy of the independent accountant's report; and

(iv) May provide additional information regarding the issuer's views of and response to the independent accountant's report.

(3) Reports of the independent accountant submitted by the issuer to the Commission's Office of the Chief Accountant in accordance with paragraph (a)(2)(iii)(B) of this section shall be deemed to have been made pursuant to section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j-1(b)(3) or 78j-1(b)(4), for purposes of the safe harbor provided by section 10A(c) of the Act, 15 U.S.C. 78j-1(c).

(4) Submission of the notice in paragraphs (a)(1) and (a)(2) of this section shall not relieve the issuer from its obligations to comply fully with all other reporting requirements, including, without limitation:

(i) The filing requirements of Form 8-K, § 249.308 of this chapter, and Form N-SAR, § 274.101 of this chapter, regarding a change in the issuer's certifying accountant and

(ii) The disclosure requirements of Item 304 of Regulation S-K, § 229.304 of this chapter.

(b)(1) Any independent accountant furnishing to the Commission a copy of a report (or the documentation of any oral report) in accordance with section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j-1(b)(3) or 78j-1(b)(4), shall submit that report (or documentation) to the Commission's Office of the Chief Accountant within the time period prescribed by the appropriate section of